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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KRYSTAL MANNING et al.,

Plaintiffs and Appellants,

v.

PATRICIA A. PINTO,

Defendant and Respondent.

B204686

(Los Angeles County
Super. Ct. No. KC050489)

APPEAL from an order of the Superior Court of Los Angeles County,

Dan T. Oki, Judge. Affirmed.

Law Office of Thomas P. Aplin and Thomas P. Aplin for Plaintiffs and
Appellants.

Hershorin & Henry, Lori C. Hershorin and Patrick Reider for Defendant and
Respondent.

INTRODUCTION

Plaintiffs and appellants Krystal Manning, Danielle Manning, and Marndena Manning (plaintiffs) accuse their aunt, defendant and respondent Patricia A. Pinto (defendant), of misappropriating most of the assets of their now-deceased grandmother. Plaintiffs' second amended complaint purports to set forth causes of action for constructive trust, constructive fraud, and breach of fiduciary duty. The trial court sustained defendant's demurrer to plaintiffs' second amended complaint without leave to amend, and then entered an order dismissing plaintiffs' action. We affirm.

ALLEGATIONS IN THE SECOND AMENDED COMPLAINT

Plaintiffs allege the following in their second amended complaint.¹

1. *General Allegations Incorporated Into Each Cause of Action*

Plaintiffs are the grandchildren of Patricia A. Manning (decedent), who died in September 2006. Defendant is decedent's daughter and only surviving child, and plaintiffs' aunt.

Decedent died intestate. "Plaintiffs, as the children of their deceased fathers, are legal heirs" to decedent, "entitled to a 2/3 interest" in decedent's estate under Probate Code section 240.

Plaintiff Krystal Manning's father, James Manning, lived with and cared for his mother, decedent, for many years until his death in 2005. Upon James Manning's death, defendant "assumed James's role of caring for" decedent.

In April 2006, decedent signed a grant deed transferring residential real property located in West Covina (the Real Property) to defendant and decedent, as joint tenants. This transfer was made without consideration. At various other times, decedent transferred personal property to defendant without consideration. This personal property included but was not limited to cash believed to exceed \$100,000 in decedent's bank

¹ For purposes of this appeal, we assume that the material facts in plaintiffs' second amended complaint are true. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*).)

accounts, one or more automobiles, policies of insurance, furniture, home appliances, clothing, jewelry, and other household items (the Personal Property).

Decedent lacked the capacity to enter into contracts, execute deeds, or transfer the Real Property and Personal Property because “[she] was suffering from cancer and other illnesses associated with advanced age” Defendant is a licensed attorney with “special knowledge and skill” with regard to legal and real estate matters. “Plaintiffs relied on Defendant’s special knowledge and skill and Defendant assumed a fiduciary relationship with Decedent and Plaintiffs to act in accord with Decedent’s wishes and to ensure that Decedent’s estate was properly administered upon her death.”

Defendant exercised “undue influence” over decedent, and failed to explain to decedent the “legal consequences” of her actions. Decedent transferred the Real Property and the Personal Property to defendant “based upon the false belief that Defendant was acting not in her own self-interest but in the interests of preserving Decedent’s intent that Plaintiffs would share in her estate upon her death.”

As a result of defendant’s fraud, undue influence, and breach of trust, all or a substantial portion of decedent’s estate was transferred to defendant without consideration shortly before decedent’s death, “thereby leaving little if any property in the estate subject to probate and causing Plaintiffs to lose their rightful inheritance.”

2. *First and Second Causes of Action for Constructive Trust on Real Property and Constructive Trust on Personal Property*

Defendant intended to “hinder, delay or defraud Plaintiffs directly and as third party beneficiaries (Plaintiffs are also victims of Decedent’s [*sic*] fraud upon Decedent).” “By virtue of her fraudulent acts and undue influence,” defendant holds the Real Property and the Personal Property “in constructive trust for Plaintiffs’ benefit.” Plaintiffs’ collective interest in the Real Property exceeds \$400,000 and their collective interest in the Personal Property exceeds \$666,666.

3. *Third Cause of Action for Constructive Fraud*

Defendant breached her fiduciary duty to decedent and her fiduciary duty to plaintiffs. “Defendant abused her special knowledge of the law and real estate and the

trust and confidence placed in her by her family and took advantage of Decedent's age, infirmity, lack of special skills or knowledge of the law and real estate, and diminished capacity, to fraudulently conceal the effect of the transfers and to induce the transfers of the Real Property and personal property for her own benefit. Defendant knew that her mother would die intestate and that Decedent had no intention to disinherit her grandchildren, so Defendant arranged for her mother to transfer her assets to Defendant prior to her death, without consideration, so that Defendant could assume custody and control of those assets, avoid probate and deny her nieces their rightful claims. Defendant's concealment of the true facts was intentional, deliberate and designed to induce reliance by her mother, to the detriment of Plaintiffs, who as third-party beneficiaries stood to share in an intestate inheritance." As a result of defendant's conduct, plaintiffs have suffered damages.

4. *Fourth Cause of Action for Breach of Fiduciary Duty*

Defendant breached her separate fiduciary duties to decedent and to plaintiffs. As a result of that breach, plaintiffs have suffered damages.

ISSUES

There are two primary issues:

1. Whether the trial court erroneously sustained defendant's demurrer to plaintiffs' second amended complaint; and
2. Whether plaintiffs should be granted leave to amend.

DISCUSSION

1. *Standard of Review*

"A demurrer tests the legal sufficiency of factual allegations in a complaint." (*Rakestraw, supra*, 81 Cal.App.4th at p. 42.) "On appeal, a plaintiff bears the burden of demonstrating that the trial court erroneously sustained the demurrer as a matter of law. This court thus reviews the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory." (*Id.* at p. 43.)

“ “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” ’ ’ ” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

2. *A Constructive Trust is a Remedy, Not a Cause of Action*

Plaintiffs’ first and second purported causes of action for constructive trust are not causes of action. “A constructive trust is ‘not an independent cause of action but merely a type of remedy’” (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82; see also *Olson v. Toy* (1996) 46 Cal.App.4th 818, 823 (*Olson*).)

The second amended complaint does not clearly identify the underlying cause of action plaintiffs contend supports the remedy of a constructive trust. Plaintiffs apparently claim that they are entitled to a constructive trust as a result of defendant’s alleged constructive fraud and breach of fiduciary duty. As we will explain, however, the second amended complaint fails to state sufficient facts to constitute those causes of action.

3. *The Second Amended Complaint Does Not State Causes of Action for Constructive Fraud and Breach of Fiduciary Duty*

A. *Plaintiffs’ Causes of Action Depend on the Existence of a Confidential or Fiduciary Relationship Between Plaintiffs and Defendant*

Plaintiffs’ third cause of action for constructive fraud and fourth cause of action for breach of fiduciary duty both depend on the existence of a confidential or fiduciary relationship between plaintiffs and defendant. “ ‘Confidential relations’ and ‘fiduciary relations’ are, in law, synonymous and exist whenever trust and confidence is reposed by one person in the integrity and fidelity of another. A fiduciary relationship is a recognized legal relationship such as a guardian and ward, trustee and beneficiary, principal and agent, or attorney and client, whereas a confidential relationship may be founded on moral, social, domestic or merely personal relationship as well as on legal relationship, and may exist where there is no fiduciary relation.” (34A Cal.Jur.3d (2008) Fraud and Deceit, § 12, p. 375, fns. omitted.)

Constructive fraud arises from a breach of a duty by a defendant in a fiduciary or confidential relationship with the plaintiff. (*Tyler v. Children's Home Society* (1994) 29 Cal.App.4th 511, 548 (*Tyler*); see also Civ. Code, § 1573.) This breach usually consists of the nondisclosure or concealment of a material fact by a fiduciary or other person held in trust or confidence. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346-347; 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 793, pp. 1148-1149.)

Likewise, “ ‘[t]o establish a cause of action for breach of fiduciary duty, a plaintiff must demonstrate *the existence of a fiduciary relationship*, breach of that duty and damages.’ ” (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509, italics added.) Accordingly, in order to state causes of action for constructive fraud and breach of fiduciary duty, plaintiffs must state facts in their pleading showing, inter alia, that they had a fiduciary or confidential relationship with defendant.

B. *The Second Amended Complaint Does Not Contain Facts Supporting Plaintiffs' Claim That They Had a Confidential or Fiduciary Relationship with Defendant*

Plaintiffs allege that they had a confidential and fiduciary relationship with defendant because (1) defendant was their aunt and (2) defendant is an attorney. The mere existence of a relationship between an aunt and a niece, however, does not alone give rise to a confidential or fiduciary relationship. (See *Briggs v. Nilson* (1964) 226 Cal.App.2d 342, 346 (*Briggs*) [relationship between parent and child does not, by itself, establish confidential relationship]; *McMurray v. Sivertsen* (1938) 28 Cal.App.2d 541, 547 [same].) Further, plaintiffs do not allege that defendant was *plaintiffs'* attorney or that defendant assisted plaintiffs with respect to legal or real estate matters. It is axiomatic that a lawyer only has a duty to her clients, not to the world at large. (See *Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1684.) Accordingly, under the facts alleged in the second amended complaint, plaintiffs did not have a confidential or fiduciary relationship with defendant.

C. *The Second Amended Complaint Does Not Contain Facts Establishing Plaintiffs' Justifiable and Detrimental Reliance on Defendant's Alleged Nondisclosure of Facts*

Plaintiffs' constructive fraud cause of action has a second deficiency. An essential element of constructive fraud is that the plaintiff justifiably and detrimentally relied upon the defendant's nondisclosure of a material fact. (See *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239, fn. 4; *Jones v. Wagner* (2001) 90 Cal.App.4th 466, 474, fn. 3; *Tyler, supra*, 29 Cal.App.4th at p. 548.) Although the second amended complaint alleges that *decedent* changed her conduct as a result of defendant's failure to explain the legal consequences of her property transfers, it does not allege that *plaintiffs* did something or did not do something in reliance on defendant's acts or omissions. The second amended complaint therefore fails to state facts establishing the element of reliance.

D. *Plaintiffs Do Not Have Standing to Assert Causes of Action Based on Defendant's Alleged Tortious Conduct Toward Decedent*

Plaintiffs contend that their third and fourth causes of action are based not only on defendant's fiduciary duty to *plaintiffs* but also on defendant's fiduciary duty to *decedent*. Defendant's alleged breach of her fiduciary duty to decedent, plaintiffs contend, gives rise to plaintiffs' constructive fraud and breach of fiduciary duty causes of action. As we will explain, however, plaintiffs do not have standing to assert a claim on behalf of decedent because they are not decedent's personal representatives or successors in interest.

Code of Civil Procedure section 377.30 provides: "A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." Here, the second amended complaint does not allege that plaintiffs are decedent's personal representatives or successors in interest. Plaintiffs therefore do not have

standing to pursue causes of action against defendant based on defendant's alleged tortious conduct toward decedent.

Plaintiffs' reliance on *Grace v. Rodrigues* (1952) 111 Cal.App.2d 131 (*Grace*) is misplaced. In *Grace*, the plaintiffs alleged that their mother, the decedent, entered into an oral agreement with the defendant. Under the agreement, the decedent transferred real property to the defendant in reliance upon the defendant's promise that after decedent died she would divide the property equally among herself and the plaintiffs. (*Id.* at p. 132.) The defendant, however, repudiated the agreement after the decedent died, and refused to divide the property. (*Ibid.*) Although the court did not directly address the issue, it is clear from the facts of the case that the plaintiffs had standing to sue the defendant as third party beneficiaries of the "agreement," i.e., the contract between the defendant and the decedent. (See Civ. Code, § 1559.) In this case, by contrast, plaintiffs did not allege in the second amended complaint that defendant and decedent entered into a contract for plaintiffs' benefit. *Grace* therefore is distinguishable from this case.

4. *Plaintiffs Did Not Meet Their Burden of Showing a Reasonable Possibility Exists That They Can Cure the Defects in Their Second Amended Complaint*

"When a demurrer is sustained without leave to amend, this court decides whether a reasonable possibility exists that amendment may cure the defect; if it can we reverse, but if not we affirm. The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.]" (*Rakestraw, supra*, 81 Cal.App.4th at p. 43.)

Here, plaintiffs did not request leave to amend in their opposition to defendant's demurrer to the second amended complaint~(CT 332-342)~, in their appellate briefs, or at oral argument before this court. Plaintiffs therefore did not meet their burden of showing that there was a reasonable possibility of curing the defects in their second amended complaint by further amendment.

At oral argument, plaintiffs and defendant agreed that this dispute should be litigated in the probate department of the superior court. Nothing in this opinion prohibits plaintiffs from commencing a probate proceeding or bars plaintiffs or decedent's personal representative from pursuing claims on behalf of the estate in probate.² (See *Lewis v. Beeks* (1948) 88 Cal.App.2d 511, 519; *Estate of Aiello* (1980) 106 Cal.App.3d 669, 672-673.) Our opinion is not an adjudication of the merits of any potential claims by decedent's personal representative or plaintiffs based on defendant's alleged tortious conduct towards decedent. (See *Hudis v. Crawford* (2005) 125 Cal.App.4th 1586, 1592.)

DISPOSITION

The order dismissing plaintiffs' second amended complaint is affirmed. The parties shall bear their own costs on appeal.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

² We do not decide whether decedent's claims should be pursued by decedent's personal representative or by plaintiffs as heirs to decedent. (See *Olson, supra*, 46 Cal.App.4th at pp. 823-824.)